

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2159 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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BALKRISHNA NAIR

Versus

MAMLATDAR

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Appearance:

None present for petitioner

None present for respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/08/2000

ORAL JUDGEMENT

#. The matter is called out in the first round, then in the second round and lastly in the third round but none put appearance for the petitioner. The Special Civil Application is dismissed for non-prosecution. Rule is

discharges. Interim relief, if any, granted stands vacated. No order as to costs.

#. Before this order could have been signed and when this court is about to retire, Shri S.M.Shah, learned counsel for the petitioner appeared and he is heard.

#. In para 4 of the Special Civil Application, the petitioner stated that the respondent No.1 threatened him to forcibly remove his cabin and further to demolish it. From this special Civil Application it transpires that the part of the land in dispute has been given by the petitioner on rent or lease whatever it may be to one Amin Ralakha and who has also put cabin thereon and carrying on pan business. This petition was placed in court for preliminary hearing on 26.3.92. On that date notice was given to the respondents and ad-interim relief has also been granted restraining the respondents from removing the cabin of the petitioner. The notice was made returnable on 6.4.92. On 6.4.92 the matter was admitted and ad-interim relief granted earlier was ordered to be continued till further orders. I do not find anything on the record that this interim relief at any stage was vacated by the court.

#. None of the respondents has cared to file reply to the Special Civil Application. Not only this even nobody is present in the court on behalf of either of the respondents to make oral submissions.

#. The petitioner has failed to show his any right, title or interest in the land in dispute. This land possibly belongs to Government and the petitioner may be trespasser. In para No.3 the petitioner has stated that after erecting these 2 cabins he has taken electricity connection and paying electricity bills regularly to the Board but merely on the basis of these affidavits it is difficult to take what to say to accept that the petitioner has any right, title or interest in the land. During the course of arguments on being asked by the court the learned counsel for the petitioner has failed to point out any cogent and satisfactory evidence to prove that the petitioner is in lawful possession of the land in dispute. Shri Shah submitted that even if the cabin is there on the Government land, before the petitioner is asked to go therefrom and cabin has to be demolished, who is in possession thereof for last more than 20 years, it is not permissible to the respondents to do so without following due procedure of law. It is submitted that before removing the petitioner from the site in question the basic principle of natural justice

has to be followed at least.

#. It is unfortunate that in such matters both the respondents are conspicuously remained silent and they have not chosen to file reply to the Special Civil Application. Possible inference can be drawn from this approach of the respondents that they want to support the petitioner or they desire that the petitioner may continue there under the court's order or under the court's protection accordingly. If it is the case of ranked trespasser on the Government land and the respondents are desirous to remove the petitioner from the site in question they should have come up with the reply and to make submissions. I fail to see any justification in this approach of the respondents in the courts and as a result of which though where the petitioner may not be entitled for any relief whatsoever the court grants relief. It is as a result of the total noncooperative attitude of the respondents in the court, the petitioner has been protected by this court and this protection continues till date. So, the interest of justice will be served in case this Special Civil Application is disposed of in terms that the respondent No.1 is free to pass appropriate order and to take appropriate steps for taking the possession of the land in dispute after giving notice and opportunity of hearing to the petitioner. This exercise has to be completed within a period of two months from the date of the receipt of the writ of this order. Till then, the interim relief granted earlier shall continue. In case, where the order goes against the petitioner, it may not be given effect and no further action be taken in pursuant thereof for a period of two weeks.

Subject to the terms aforesaid the Special Civil Application and Rule stands disposed of with no order as to costs.

(S.K.Keshote, J.)

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